

IFW DAC
\$

I hereby certify that this correspondence is being deposited with the United States Postal Service, with sufficient postage, as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below:

Daniel B. Schein

Daniel B. Schein, Ph.D., Esq., Reg. No. 33,551

6 September 2004
Date



Case No. 11493-3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Aroon Raman et al.

Serial No: 10/019,634

Examiner: Neil S. Levy

Filed: 12/27/2001

Group Art Unit: 1616

For: A SUBSTANCE DELIVERY
DEVICE

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Attention: Office of Petitions
Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS
APPLICATION UNDER 37 CFR 1.137(a).**

The above-identified application became abandoned for failure to file a timely reply to the Office Action mailed February 20, 2004. The undersigned attorney for applicants respectfully submits that the entire delay in filing the required response from the due date of August 20, 2004 until the filing of a

09/15/2004 WABDELRI 00000084 10019634
01 FC:1452
110.00 OP

grantable petition was unavoidable due to the sudden hospitalization of the undersigned, which is explained in more detail below, and that there was no intention to abandon this application from the due date through the filing of a grantable petition.

SUBMITTED HEREWITH ARE:

1. Petition fee for other than small entity – (37 CFR 1.17(I)).
2. A reply to the Office action mailed February 20, 2004.
3. A Request for Continued Examination, plus fee.
4. A Petition For Extension of Time Under 37 CFR 1.136 for three (3) months, plus fee.
5. Form PTO-2038 authorizing the charge of all fees associated herewith to be charged to the credit card identified thereon.
6. Documents evidencing that a response would have been timely filed but for the sudden hospitalization of the undersigned.

NO TERMINAL DISCLAIMER REQUIRED

Since this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

ADEQUATE SHOWING OF THE CAUSE OF THE DELAY

The undersigned attorney respectfully submits that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable and certainly unintentional as well.

I began suffering flu-like symptoms on Monday, August 16, 2004 and did limited work from home August 17 and 18, 2004. Because I knew a response was due in this case on Friday, August 20, 2004, I went into my office to work on the morning of August 19, 2004, and acknowledged response instructions sent via email from the client's representative in

England (see Attachment A). The email exchange between the client's representative and me shows that I requested at 10:13 AM on August 19, 2004 (18:13 London time) that the instructions sent in *.pdf format be sent to me in word processing format so that I could cut and paste arguments into my responsive amendment. Having previously filed a response in this matter and having reviewed the client's instructions and the file on the morning of August 19, 2004, I believed it should be no problem for me to prepare and timely file a response by the due date of the next day.

However, rather than feeling better, my illness worsened on August 19, 2004. In addition to fever, severe headache, and nausea, I began to have difficulty breathing, and I sought treatment at O'Connor Hospital in San Jose, California. A first emergency room Doctor examined me, and instructed a nurse to insert an intravenous line in my arm and to begin infusing antibiotics, fluids, and other medications. Subsequently that evening, another Doctor, Dr. Chung, advised me that I was suffering from pneumonia and that I needed to remain in the hospital. Antibiotics, fluids, pain relievers, and other medications were administered to me for two days while I was confined to the hospital. Due to the medications administered, I was unconscious for long periods of time during my hospital stay, and I was not discharged until Saturday, August 21, 2004. Attached as Attachment B is the Nursing Discharge Summary Instructions given to me on Saturday, August 21, 2004, which specify limited activity and rest.

As can also be seen in Attachment A, while I was hospitalized on August 20, 2004, a further copy of the client's instructions in word processing format were timely sent to me via email in the early morning by the applicants' representative in England. It should be noted that the applicants are located in India, which slows reporting office actions and communications with the client to obtain response instructions. Nevertheless, had I not been hospitalized, I could have prepared a timely response.

After my release from the hospital on Saturday, August 21, 2004, I began suffering post-pneumonia symptoms on Monday, August 23, 2004. The symptoms became severe enough that I was admitted to O'Connor Hospital again on Thursday, August 26, 2004. An intravenous infusion was given to me with a variety of medications, and I was diagnosed with pleurisy. I was discharged later the same day with instructions to rest and additional medications were prescribed. My illness continued through the following week, with fever and pain.

As promptly as I felt that I could do so, I prepared this petition along with the response and other documents and fee submissions required to fully respond to the outstanding Office Action. The delay in filing the response was unavoidable as my illness and hospitalization prevented me from completing its preparation and filing until after the due date.

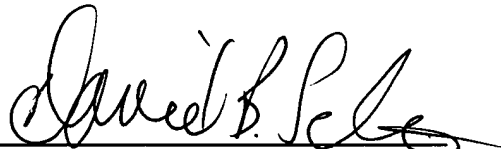
I respectfully ask that the delay in filing the response be held to be unavoidable, and that the application be revived.

Dated: 6 September 2004

P.O. BOX 28403
SAN JOSE, CA 95159

Tel: 408-294-6750
Fax: 408-294-6752
Email: shinelegal@aol.com

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Daniel B. Schein", written over a horizontal line.

Daniel B. Schein, Ph. D. Esq.
Registration No. 33,551
Attorney for Applicants

ATTACHMENT A

**COPY OF EMAIL CORRESPONDENCE FROM AUGUST
17, 2004 THROUGH AUGUST 20, 2004 EXCHANGED
BETWEEN THE APPLICANTS' REPRESENTATIVE IN
ENGLAND AND THEIR US PATENT COUNSEL
DEMONSTRATING THAT INSTRUCTIONS WERE TIMELY
PROVIDED AND THAT A TIMELY RESPONSE WOULD
HAVE BEEN FILED BUT FOR THE SUDDEN
HOSPITALIZATION OF THE APPLICANTS' US PATENT
COUNSEL**

Subj: **Attn: D Schein: (Our ref: JM/P206465US Your ref: 11493-3)**
Date: 8/20/2004 2:15:07 AM Pacific Daylight Time
From: elh@udl.co.uk
Reply-to: jmd@udl.co.uk
To: Shinelegal@aol.com

Dear Mr Schein

Further to your email to John McDonough below, please find attached a copy of our letter of 17 August 2004 which is saved in Word format for editing purposes. Please contact me if you have any problems opening or editing the document.

Regards,

Emma Harris
Secretary to Johnathan McDonough
for Urquhart-Dykes & Lord LLP
Tel: +44 (0) 113 245 2388
Fax: +44 (0) 113 243 0446

This email is sent for and on behalf of Urquhart-Dykes & Lord LLP, a limited liability partnership registered in England and Wales, registration number OC307196, registered office: Tower North Central, Merrion Way, Leeds GB-LS2 8PA. A list of the members' names is available for inspection at the registered office. More information is available at <http://www.udl.co.uk/>

Viruses: Although we have taken steps to ensure that this email and any attached files are free from any virus, the recipient should ensure they are actually virus free in keeping with good computing practice.

Security Warning: Please note that this email has been sent in the knowledge that Internet email is not an absolutely secure communication medium. Please bear this lack of security in mind when communicating with us by email.

Confidentiality: This email and any attached files are intended for the named recipients only and may be confidential. If they have come to you in error you should take no action based on them, and should not copy or show them to anyone; please reply to this email and highlight the error.

-----Original Message-----

From: John McDonough
Sent: 20 August 2004 09:59
To: Emma Harris
Subject: FW: FW: Attn: D Schein: US Patent Application No. 10/019634 (Our ref: JM/P...

-----Original Message-----

From: Shinelegal@aol.com [<mailto:Shinelegal@aol.com>]
Sent: 19 August 2004 18:13
To: John McDonough
Subject: Re: FW: Attn: D Schein: US Patent Application No. 10/019634 (Our ref: JM/P...

John:

Received with thanks. I have had a severe flu since monday, so I am just getting caught up today.

Could you send the remarks in word processing format so I can cut and paste as need to save \$?

Best regards,

Dan

In a message dated 8/19/2004 4:34:02 AM Pacific Daylight Time, elh@udl.co.uk writes:

Please find below a further copy of my email of 17 August 2004. I would be grateful if you could confirm receipt by return.

Regards,

John McDonough
for Urquhart-Dykes & Lord LLP

> -----Original Message-----

> From: Emma Harris

> Sent: 17 August 2004 17:39

> To: 'shinelegal@aol.com'

> Subject: Attn: D Schein: US Patent Application No. 10/019634 (Our ref: JM/P206465US Your ref: 11493-3)

>

> For the attention of Daniel B Schein Esq:

>

> Dear Mr Schein

>

> Please find attached a letter from Johnathan McDonough. This document is saved in Adobe Acrobat format and if you have any problems opening it please contact me.

>

> Regards,

>

> Emma Harris

> Secretary to John McDonough

> for Urquhart-Dykes & Lord LLP

> Tel: +44 (0) 113 245 2388

> Fax: +44 (0) 113 243 0446

>

> This email is sent for and on behalf of Urquhart-Dykes & Lord LLP, a limited liability partnership registered in England and Wales, registration number OC307196, registered office: Tower North Central, Merrion Way, Leeds GB-LS2 8PA. A list of the members' names is available for inspection at the registered office. More information is available at <http://www.udl.co.uk/>

>

> Viruses: Although we have taken steps to ensure that this email and any attached files are free from any virus, the recipient should ensure they are actually virus free in keeping with good computing practice.

> Security Warning: Please note that this email has been sent in the knowledge that Internet email is not an absolutely secure communication medium. Please bear this lack of security in mind when communicating with us by email.

> Confidentiality: This email and any attached files are intended for the named recipients only and may be confidential. If they have come to you in error you should take no action based on them, and should not copy or show them to anyone; please reply to this email and highlight the error.

> > <<Schein_040817.pdf>>

Best regards,

Dan

Daniel B. Schein, Ph.D., Esq.
LAW OFFICES OF DANIEL B. SCHEIN, PH.D., ESQ.

P.O. Box 28403
San Jose, California 95159
United States of America

Tel: 408-294-6750

Fax: 408-294-6752

Cell: 408-515-1827

Email: shinelegal@aol.com

Specializing in all aspects of intellectual property law, including patent, trademark, and copyright issues.

Dr. Schein is a Member of the State Bars Of California, Washington, D.C., and Pennsylvania.

Dr. Schein earned a Ph.D. in Chemistry before becoming a Registered United States Patent Attorney.

THIS MESSAGE MAY CONTAIN CONFIDENTIAL AND/OR ATTORNEY CLIENT PRIVILEGED OR ATTORNEY WORK PRODUCT INFORMATION. UNAUTHORIZED USE, COPYING OR DISTRIBUTION IS PROHIBITED AND CAN LEAD TO CRIMINAL AND CIVIL PENALTIES. PLEASE NOTIFY THE LAW OFFICES OF DANIEL B. SCHEIN, PH.D., ESQ. IF IT IS RECEIVED IN ERROR.

ATTACHMENT B

**COPY OF PATIENT DISCHARGE INSTRUCTIONS DATED
21 AUGUST 2004 FROM O'CONNOR HOSPITAL, SAN
JOSE, CALIFORNIA, FOR APPLICANTS' US PATENT
COUNSEL FOR HOSPITALIZATION STARTING ON 19
AUGUST 2004**



O'Connor Hospital

**NURSING DISCHARGE
SUMMARY / INSTRUCTIONS**

894955 45Y M

SCHEIN, DANIEL

55873749

DR. CHUNG, CHRIS

7/ 6/59

IMPRINT AREA

Date: 8/21/04 Time: 0920

Mode: ☐ Ambulatory ☒ Wheelchair ☐ Gurney

To: ☐ Private Car ☐ Ambulance

Home Care to see: ☐ Yes ☒ No

PATIENT STATUS

ABILITY TO CARE FOR SELF:

☒ Independent ☐ Requires Assistance

WOUND CONDITION:

☐ Dry Healing ☐ Inflamed
☐ Draining ☒ N/A
☐ Sutures

Instruction: _____

Notify your doctor if you notice any redness, swelling, bleeding, pus, foul odor or increased soreness or pain.

ACTIVITY: limited rest + fluids + anal

LAST PAIN MEDICATION GIVEN:

Time: _____ : _____ Response: _____

Pain Control at home discussed: ☐ Yes ☐ No ☐ N/A

DIET: as tolerated

WOUND CARE: ☐ Yes ☒ No

Dressing Change: ☐ Yes ☒ No

DISCHARGE MEDICATION LIST

| NAME OF DRUG | DOSE | TIMES/DAY | | | | | | | COMMENTS |
|---------------------------------------|------|-----------|--|--|--|--|--|--|----------|
| <u>Medications as directed by MD.</u> | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

Physician: Dr. Muller

Next Doctor's Appointment: Friday

Allergies: NONE

OTHER SPECIAL INSTRUCTIONS
(Booklets / Discharge Sheets)

WRITTEN MED. GUIDELINES PROVIDED:

- | | |
|---|--|
| <input type="checkbox"/> Anticoagulation* | <input type="checkbox"/> MAO Inhibitors* |
| <input type="checkbox"/> Antiplatelets | <input type="checkbox"/> Antimanic* |
| <input type="checkbox"/> Antibiotics* | <input type="checkbox"/> Pain Management |
| <input type="checkbox"/> Anti Convulsants | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Asthma Drugs | _____ |
| <input type="checkbox"/> Digitalis Glycosides | _____ |
| <input type="checkbox"/> Diuretics | * Food / Drug Interaction |

I have been given a copy of this instruction and understand the information. I have received all my belongings inventoried upon admission.

Patient / Significant Other

[Signature]

Discharge Nurse

[Signature]



SAN FRANCISCO, CA 9416100
O'Connor Hospital

DISPOSITION

☐

ADMIT

DISCH.

TIME

CONTROL RECORD NO.

REFERRED TO:

| PRE-NO. | PATIENT NO. | PT. TYPE | SERVICE | BIRTHDATE | AGE | SEX | MS | MODE ARRIVAL | MED. REC. NO. | REGIST. | DATE-TIME |
|-----------|-------------|----------|---------|-----------|-----|-----|----|--------------|---------------|---------|-----------|
| 5580240-1 | | E | EMD | 7/08/59 | 45Y | M | M | | 894855 | 8/20/04 | 13:45 |

| P | T | PATIENT NAME/ADDRESS | S.S. NO/PHONE | COMPLAINT |
|---|---|----------------------|---------------|------------------------|
| | | SCHUBIN, DANIEL | 227-76-8691 | SOB/R SIDED "PLEURISY" |



PATIENT INFORMATION INSTRUCTIONS



MR MULLER, RICHARD L. 408-998-4312

GENERAL INFORMATION

We are pleased to be of service to you. The Emergency Department provides initial evaluation and treatment of patients with illnesses and injuries that require attention without delay. Patients are seen in the order of their medical urgency, not according to time of arrival. You should contact your private physician or the physician to whom you have been referred for follow-up care and treatment as this is an important part of your total treatment. This should be done according to the instructions given to you or as soon as necessary.

LABORATORY TESTS

All abnormal tests are reviewed daily. If a change is indicated in your treatment program, you will be notified by telephone or by letter if you have no phone or are unavailable.

X-RAYS

Your X-Rays have been read and interpreted by the Emergency Physician. In addition to this, all X-Rays are reviewed by the Radiologist (X-Ray specialist) within 24 hours. If there is any discrepancy between the preliminary reading and the Radiologist's interpretation, you will be notified by telephone or by letter.

There is an EMERGENCY PHYSICIAN available 24 hours a day in the Emergency Department. If you are unable to reach your private physician we can be reached at the following number:

O'Connor Hospital Emergency Department (408) 947-2666

Impression:

① Acute ② Pleurisy ③ SP ④ ALL Pneumonia

Work / School:

☐ Return to regular

☐ Return to modified

Restriction:

☐ Return to school / PE

Disposition:

☒ Discharge home ☐ Admit ☐ Admit to observation

☐ Transfer to:

Discharge Condition:

☒ Good ☐ Fair ☐ Guarded

☐ Improved ☒ Stable

Refer to ☐ Primary MD ☐ Industrial Clinic ☐ Other:

Instructions:

① Follow up with Dr. Muller
② Take Vicoprofen for pain

You have been given discharge information on

MD Signature

Date

Patient or Parent/Guardian
Signature

Nurse Signature